

# Advice Summaries

August 2001

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an “A,” while informal assistance is identified by the letter “I.”

## ***Proposition 208 Largely Supplanted by Proposition 34***

Proposition 34 repealed most of the provisions of Proposition 208, including all but two of the requirements at issue in the federal court challenge that led up to the 1998 injunction of Proposition 208. Recognizing this effect of Proposition 34, the federal court signed an order lifting the injunction of Proposition 208 effective January 1, 2001, the date on which Proposition 34 came into effect. As of the new year, twelve provisions of Proposition 208 became effective (principally, advertising disclosure requirements not challenged in the federal lawsuit and not repealed by Proposition 34). Two provisions of

Proposition 208 which were not repealed by the new measure,

but which were challenged in court (involving slate mail disclosure issues) remained under preliminary injunction. The trial court issued its final judgment on those two provisions on March 1, 2001, adjudicating the complaint of the slate mail plaintiffs and permanently enjoining Sections 84305.5 and 84503. On March 12, 2001, the Commission filed with the trial court a motion requesting that the court alter and amend its judgment to provide that the court’s judgment did not apply to Section 84305.5 as it existed prior to Proposition 208, and to further provide that Section 84503 is unconstitutional only as applied to slate mailers.

On May 8, 2001, Judge Karlton issued an order specifying that the court had only ruled on the constitutionality of § 84305.5 insofar as it was amended by Proposition 208, and had only ruled § 84503 unconstitutional as applied to slate mailers.

# Advice Summaries

August 2001

## Campaign

**Lisa Ott, Campaign Manager**  
**Larry Willey for State Senate**  
**Dated August 8, 2001**  
**Our File Number: I-01-103**

**Stephen Kaufman**  
**Soto for Senate**  
**Dated August 8, 2001**  
**Our File Number: A-01-159**

**James R. Sutton**  
**Committee to Save Our City**  
**College**  
**Dated August 30, 2001**  
**Our File Number: A-01-184**

## Conflicts of Interest

**Diane L. Bathgate**  
**City of San Juan Capistrano**  
**Dated August 13, 2001**  
**Our File Number: A-01-082**

**William Murano**  
**County of Lassen**  
**Dated August 6, 2001**  
**Our File Number: A-01-099**

**Stephen A. Del Guercio**  
**La Cañada-Flintridge**  
**Dated August 31, 2001**  
**Our File Number: I-01-116**

**David J. Weiland, City Attorney**  
**City of Mendota**  
**Dated August 1, 2001**  
**Our File Number: A-01-119**

A contribution of an entity whose contributions are directed and controlled by an individual shall be aggregated with the contributions made by that individual.

A legislator may raise unlimited campaign contributions after January 1, 2001, to pay debts incurred in a pre-2001 special election previously subject to Proposition 73 contribution limits. This letter supersedes *Bauer* Advice Letter No. A-01-044 pursuant to the Commission's policy directive.

A committee formed to support a ballot measure in a community college district, whose boundaries are identical to the county in which the district is located, asks with whom it must file its campaign reports. The letter broadly discusses Section 84215 and the interplay with local jurisdiction filing requirements.

A public official may not participate in a decision where it is reasonably foreseeable that the decision will result in a material financial effect on her source of income.

A county supervisor will have a conflict of interest in a decision that will either have a material financial effect on his sources of income or on his business. Income is defined to mean gross payments, rather than net profits and the entire payment the official receives from clients is considered income. The "public generally" exception does not apply to these facts.

A public official is not a consultant to a governmental entity, where contract was with his law firm and the services are performed by another individual. Therefore, the "governmental salary" exception does not apply. However, the "public generally" exception applies.

If a public official has a legally enforceable right to income from a business entity, he has an economic interest in that entity. Therefore, he may not participate in a decision where the decision's financial effects on the business are presumed to be material, absent proof to rebut this presumption.

# Advice Summaries

August 2001

**John R. Harper, City Attorney**  
**City of Murrieta**  
**Dated August 3, 2001**  
**Our File Number: I-01-132**

This letter provides general advice to a city council member who is also a member of the city's General Plan Advisory Committee, that he may not participate in and/or vote on changes to the general plan designation and zoning of a five square mile area within the city if it is reasonably foreseeable the decision will materially affect his accountancy business, leasehold interest, sources of income or personal finances, unless an exception applies.

**Lori J. Barker**  
**City of Chico**  
**Dated August 23, 2001**  
**Our File Number: I-01-133**

This letter addresses whether a commissioner has a conflict of interest regarding the decisions coming before the City of Chico Park Commission regarding the Lindo Channel Greenway. The park commissioner owns a residence that is located within 500 feet of, but not adjacent to, Lindo Channel.

**Tim Auran**  
**City of Burlingame**  
**Dated August 30, 2001**  
**Our File Number: A-01-138**

This letter discusses whether a conflict of interest exists for a city planning commissioner to participate in decisions regarding a development when he had been paid a commission for brokerage services, and the payment was made by the trust in which the property, which was 260 feet away from the development, had been placed.

**Raymond R. Holland**  
**Planning & Legal Affairs Private**  
**Industry Council**  
**Dated August 31, 2001**  
**Our File Number: I-01-140**

Representatives of entities on a local workforce investment board may have conflicts of interest in voting on matters that affect their respective represented entities. However, they still may be able to participate in such decisions, depending on the facts and circumstances, under the "public generally" exception.

**Guy D. Petzold**  
**City of Stockton**  
**Dated August 1, 2001**  
**Our File Number: A-01-141**

A public official is not disqualified from participating in a governmental decision because he has no economic interest in the decision.

**Evan E. Evans**  
**CalTrans Division of Structure**  
**Maintenance & Investigations**  
**Dated August 20, 2001**  
**Our File Number: I-01-143**

A retired annuitant working on an hourly basis for a government agency is not precluded from accepting private sector employment with a company providing services to the same agency. However, the potential for conflict exists whenever an annuitant assumes a governmental decision-making role.

**Donald E. White**  
**South Sutter Recreational**  
**Association**  
**Dated August 1, 2001**  
**Our File Number: A-01-149**

This letter details how a source of income is considered an economic interest and the government income exception.

# Advice Summaries

August 2001

**E. Clarke Moseley**  
**City of El Monte**  
**Dated August 31, 2001**  
**Our File Number: A-01-161**

A contract city attorney is a public official and will have a conflict of interest in any decision that will have a material financial effect on his private law firm or any source of income. Under the specific facts, the decision did not have such effect on any source of income for the prior 12 months.

**Gene Smith**  
**Butte County Commission for**  
**Children & Families**  
**Dated August 6, 2001**  
**Our File No.: A-01-163**

A chairperson for a county commission may participate in governmental decisions involving a member organization of a current employer, a non-profit organization, because those decisions will not have a reasonably foreseeable material financial effect on the public official's economic interest.

**William W. Wynder**  
**Lawndale City Council**  
**Dated August 14, 2001**  
**Our File Number: A-01-166**

A city council member, who would otherwise be disqualified from participating in a condemnation decision requiring a supermajority of 4 of 5 members of the city council, may participate under the exception for legally required participation.

**Robert A. Martinez**  
**Pico Water District**  
**Dated August 1, 2001**  
**Our File Number: I-01-171**

The Political Reform Act does not restrict a public official from holding multiple public positions.

**Russ Bogh, Assemblyman**  
**California Legislature**  
**Dated August 1, 2001**  
**Our File Number: A-01-173**

An assemblyman, who has a defined benefit pension plan qualified under Internal Revenue Code § 401(a) with a former employer, may participate in consideration of, and vote on, legislation pertaining directly to that former employer because the assemblyman does not have an economic interest in the governmental decision.

## Gifts

**Bryan C. LeRoy**  
**City of Dana Point**  
**Dated August 24, 2001**  
**Our File Number: I-01-191**

Free admission to a grand opening of a hotel for public officials is a gift absent an exception. Gifts do not meet the exception in Regulation 18944.2 if the recipients are identified by the donor. However, gifts may be paid down within 30 days after receipt and they will be deemed never accepted.

**David M. Fleishman**  
**City of Pacific Grove**  
**Dated August 24, 2001**  
**Our File Number: A-01-186**

A contract city attorney may not receive a gift of travel from a client of his private law practice that exceeds the \$320 gift limit.

# **Advice Summaries**

**August 2001**

## **Lobbying**

**Timothy W. Boyer, Chief Counsel  
State Board of Equalization  
Dated August 7, 2001  
Our File Number: A-01-106**

This letter discusses the effective date of the prohibition against lobbyist contributions to officials or candidates the lobbyist is registered to lobby.

## **Prop. 34**

**Lance H. Olson  
State Legislature  
Dated August 9, 2001  
Our File Number: I-01-144**

This letter addresses a series of questions regarding Government Code § 85316 and proposed Regulation 18531.6.

## **SEI**

**Sarah Lazarus,  
Deputy City Atty.  
City of Huntington Beach  
Dated August 31, 2001  
Our File No. I-01-164**

The members of the Huntington Beach Convention and Visitor's Bureau Board of Directors are considered members of a local government agency and are therefore subject to the Political Reform Act and required to file the annual "Form 700."